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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,954	02/25/2004	Lyle D. Tincknell	ITT-538-A	3790
22825	7590	02/17/2006	EXAMINER	
WILLIAM M HANLON, JR YOUNG & BASILE, PC 3001 WEST BIG BEAVER ROAD SUITE 624 TROY, MI 48084-3107			BOCHNA, DAVID	
			ART UNIT	PAPER NUMBER
			3679	
DATE MAILED: 02/17/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/786,954	TINCKNELL ET AL.
	Examiner David E. Bochna	Art Unit 3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 January 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,11-18 and 20-22 is/are rejected.
- 7) Claim(s) 6-10 and 19 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 1-12 in the reply filed on 1/9/06 is acknowledged. The traversal is on the ground(s) that the claims as amended in the 1/9/06 response removes the basis for restriction. The Applicant's argument is found persuasive and the restriction requirement has been removed.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 12-13, 15-16, 18 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Sampson '413.

In regard to claim 1, Sampson '413 discloses a drain seal for use with a drain tube in a structure having any aperture, the drain seal comprising:

a unitary body having first and second moldingly joined portions 1, 2; the first portion formed of a material having a first durometer and the second portion formed of a material having a second durometer; and

a bore (see fig. 3) extending through the body from one end of the first portion of the body to an opposite end of the second portion of the body.

In regard to claim 2, further comprising;

a chemical bond formed between the first and second portions.

In regard to claim 3, wherein the joint comprises:

at least one enlargement 3 formed on the first portion.

In regard to claim 4, wherein the at least one enlargement 3 has an outer diameter larger than an inner diameter of a drain tube.

In regard to claim 12, an extension 6 formed centrally on the first portion;

The second portion 7 surrounding and receiving the extension 6 of the first portion.

In regard to claim 13, Sampson discloses a method for forming a drain seal for use with a drain tube and a structure having an aperture, the method comprising the steps of :

molding a unitary body of first 1 and second 2 moldingly joined portions;

forming the first portion of a material having a first durometer;

forming the second portion of a material having a second durometer;

and

forming a bore extending through the body from one end of the first portion to an opposite end of the second portion.

In regard to claim 15, further forming a joint on the first portion of the body adapted for sealingly joining the body to a drain tube.

In regard to claim 16, further forming a mount on the second portion of the body adapted for mounting the body in an aperture in a structure.

In regard to claim 18, further comprising the steps of forming enlarged ends 3 for the first and second portions; and moldingly joining the enlarged ends.

In regard to claim 20, further comprising a joint carried on the first portion adapted for sealingly joining the body to a drain tube.

In regard to claim 21, a mount 3 carried on the second portion adapted for mounting the body in an aperture in a structure.

In regard to claim 22, Sampson '413 discloses a drain seal comprising:

A unitary body of first 1 and second 2, moldingly joined portions;

The first portion 1 formed of a material having a first durometer;

The second portion 2 formed of a material having a second durometer; and

A bore extending through the body from one end of the first portion to an opposite end of the second portion.

4. Claims 1, 3-5, 13 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Fulghum.

In regard to claim 1, Fulghum discloses a drain seal for use with a drain tube in a structure having any aperture, the drain seal comprising:

a unitary body having first 19 and second 21 moldingly joined portions;

the first portion formed of a material having a first durometer and the second portion formed of a material having a second durometer; and

a bore extending through the body from one end of the first portion of the body to an opposite end of the second portion of the body.

In regard to claim 3, wherein the joint comprises:

at least one enlargement 22 formed on the first portion.

In regard to claim 4, the at least one enlargement has an outer diameter larger than an inner diameter of a drain tube.

In regard to claim 5, the mount comprises:

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A rim 22 having a diameter greater than an outer diameter of the first portion; and

An annular recess 23 formed between the rim 22 and one end of the second portion, the recess adapted for receiving a surface 13 in a structure.

In regard to claim 13, Fulghum discloses a method for forming a drain seal for use with a drain tube and a structure having an aperture, the method comprising the steps of :

molding a unitary body of first 19 and second 21 moldingly joined portions;

forming the first portion of a material having a first durometer;

forming the second portion of a material having a second durometer;

and

forming a bore extending through the body from one end of the first portion to an opposite end of the second portion.

In regard to claim 16, forming a mount 23 on the second portion of the body adapted for mounting the body in an aperture in a structure.

In regard to claim 17, the mounting means comprises the step of:

Forming an annular undercut 23 between a drain end of the second portion of the body and an end surface of the body.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sampson '413. Sampson does not specifically disclose that the first portion and second portion are made of different materials. However, it would have been obvious to make the first and second portions out of different materials because the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

***Allowable Subject Matter***

7. Claims 6-10 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

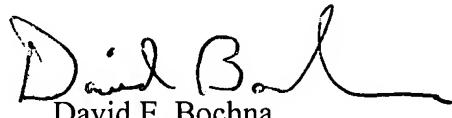
***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Diggs, Roseman, Akers, Appleton, Tidd and Herrick et al. all disclose similar couplings common in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Bochna whose telephone number is (571) 272-7078. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David E. Bochna  
Primary Examiner  
Art Unit 3679